

PS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHELSIE HOPPER,

Plaintiff,

v.

21-CV-06059 DGL
ORDER

CHEMUNG COUNTY, et al.,

Defendants.

Pro se Plaintiff, Chelsie Hopper, was a prisoner confined at the Chemung County Jail. She filed a complaint asserting claims under 42 U.S.C. § 1983, Docket Item 1. She did not pay the filing fee, nor did she submit an application to proceed *in forma pauperis* (that is, as someone who should have the prepayment of the ordinary filing fee waived because she cannot afford it).

As set forth below, the Clerk of Court shall administratively terminate this action. If Plaintiff wishes to reopen this case, she must notify the Court in writing **within 30 days of the date of this Order** and must include either (1) a motion to proceed *in forma pauperis*, or (2) the \$350.00 filing fee and the \$52.00 administrative fee (\$402.00 total).

DISCUSSION

A party commencing a civil action in this Court ordinarily must pay a \$350.00 filing fee as well as a \$52.00 administrative fee.¹ See 28 U.S.C. § 1914; Judicial Conference Schedule

¹Effective May 1, 2013, the Judicial Conference of the United States added an administrative fee of \$50.00 to the cost of filing a civil lawsuit in district court. See September 2012 Report of the Proceedings of the Judicial Conference of the United States, available at <http://www.uscourts.gov/about-federal-courts/reports-proceedings-judicial-conference-us>. But this additional administrative fee does not apply to prisoners who are granted permission to proceed *in forma pauperis*. See generally *id.* Effective December 1, 2020, this

of Fees, District Court Miscellaneous Fee Schedule;² Western District of New York, District Court Schedule of Fees.³ If a litigant wishes to commence a civil action, the litigant must either (1) pay those fees or (2) obtain permission to proceed *in forma pauperis*, under 28 U.S.C. § 1915.

I. REQUIREMENTS FOR *IN FORMA PAUPERIS* APPLICATION

Under 28 U.S.C. § 1915, a litigant seeking to bring a civil action *in forma pauperis* must submit an affidavit or affirmation detailing assets and liabilities and swearing under oath that the litigant is unable to pay the \$350.00 filing fee. A motion to proceed *in forma pauperis* should be supported by such an affidavit or affirmation filed at the same time as the complaint. The United States District Court for the Western District of New York has made available a form motion to proceed *in forma pauperis* with supporting affirmation⁴ that is designed to help *pro se* litigants (such as the Plaintiff here) comply with 28 U.S.C. § 1915.

II. ADMINISTRATIVE TERMINATION OF THIS ACTION

Here, Plaintiff did not pay the \$350.00 filing fee or the \$52.00 administrative fee that ordinarily is required to commence a civil action. Nor did she submit a complete motion to proceed *in forma pauperis*; an affidavit swearing that she is unable to pay a \$350.00 filing fee, see 28 U.S.C. § 1915(a)(1); Therefore, the Clerk of Court shall administratively terminate

fee was increased to \$52.00. See <https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>.

² Available at <http://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>.

³ Available at <http://www.nywd.uscourts.gov/fee-schedule>.

⁴ The court has ordered that a form motion to proceed *in forma pauperis* with supporting affirmation be mailed to the plaintiff. The form also is available at <http://www.nywd.uscourts.gov/pro-se-forms>.

this action⁵ without filing the Complaint or assessing a filing fee, as ordered below. As also ordered below, Plaintiff is granted leave to reopen this action no later than thirty days from the date of this Order.

III. DEFERMENT OF SCREENING UNDER 28 UNITED STATES CODE SECTIONS 1915(E)(2)

The court is required to screen civil actions filed by those proceeding *in forma pauperis* and dismiss them if they: (1) are frivolous or malicious; (2) fail to state a claim upon which relief may be granted; or (3) seek monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2). Because Plaintiff did not properly commence this action, this Court will defer the mandatory screening process until this case is reopened—if, in fact, it is reopened.

ORDER

ORDERED that the Clerk of Court shall administratively terminate this action without filing the Complaint or assessing a filing fee; and it is further


ORDERED that the Clerk of Court is directed to send to Plaintiff a form motion to proceed *in forma pauperis* with supporting affirmation; and it is further

ORDERED that if Plaintiff wishes to reopen this action, he shall so notify this Court, in writing, no later than **30 days from the date of this Order**. This writing must include either (1) a motion to proceed *in forma pauperis* or (2) the \$350.00 filing fee and the \$52.00 administrative fee (\$402.00 total); and it is further

⁵ Such an administrative termination is not a "dismissal" for purposes of the statute of limitations. Therefore, if the case is reopened under the terms of this order, it is not subject to the statute of limitations time bar as long as it originally was timely filed. See *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner mailbox rule); *McDowell v. Del. State Police*, 88 F.3d 188, 191 (3d Cir. 1996); see also *Williams-Guice v. Bd. of Educ.*, 45 F.3d 161, 163 (7th Cir. 1995).

ORDERED that upon Plaintiff's submission of either (1) a motion to proceed *in forma pauperis* or (2) the \$350.00 filing fee and the \$52.00 administrative fee (\$402.00 total), the Clerk of Court shall reopen this case.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
February 3, 2021.